

Message Text

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ACTION XMB-07

INFO OCT-01 EUR-25 ADP-00 AID-20 CIAE-00 COME-00 EB-11

FRB-02 INR-10 NSAE-00 RSC-01 TRSE-00 OPIC-12 CIEP-02

OMB-01 L-03 TAR-02 CEA-02 STR-08 SS-15 NSC-10 RSR-01

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R 161946Z JUL 73

FM AMEMBASSY BONN

TO SECSTATE WASHDC 6314

AMCONSUL FRANKFURT

AMCONSUL MUNICH

USMISSION BERLIN

INFO USMISSION EC BRUSSELS

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AMCONSUL BREMEN

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LIMITED OFFICIAL USE SECTION 01 OF 04 BONN 10113

DEPT PASS TREASURY; FEDERAL RESERVE, AND EXIM FOR
HENRY KEARNS

E.O. 11652: N/A

TAGS: EFIN, GW

SUBJECT: BARDEPOT--"COMMERCIALLY CUSTOMARY TERMS OF
PAYMENT"--AN NTB?

REF: (A) BONN 9923; (B) BONN 1724; (C) BONN 869; (D)
BONN A-46

1. SUMMARY: RESTRICTIVE BUNDESBANK INTERPRETATIONS
OF "COMMERCIALLY CUSTOMARY" TERMS OF PAYMENT COULD
HINDER US EXPORT FINANCING TO THE FRG. LIST ATTACHED
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OF COMMERCIALLY CUSTOMARY TERMS OF PAYMENT FOR WIDE

RANGE OF PRODUCTS. ACTION REQUESTED: WE URGENTLY NEED SPECIFIC CASE EXAMPLES WHERE ALLEGED RESTRICTIVE BUNDESBANK INTERPRETATION OF "COMMERCIALLY CUSTOMARY" TERMS OF PAYMENT MAY HINDER OUR EXPORT EFFORTS TO THE FRG. END SUMMARY

2. THE BARDEPOT (CASH DEPOSIT) ORDINANCE REQUIRES THAT GERMAN FIRMS AND INDIVIDUALS TAKING UP CREDITS OUTSIDE THE FRG MUST DEPOSIT 50 PERCENT OF THE AMOUNT OF THE CREDIT IN AN INTEREST FREE ACCOUNT WITH THE BUNDESBANK, UNLESS SUCH CREDITS ARE EXEMPTED FROM THE BARDEPOT. FOREIGN CREDITS TIED TO AN FRG EXPORT OR IMPORT ARE EXEMPTED AS LONG AS THE CREDIT TERMS ARE "COMMERCIALLY CUSTOMARY" AS DETERMINED BY THE BUNDESBANK. UNDER THE LICENSING PROVISIONS INSTITUTED BY THE FRG ON FEBRUARY 2, 1973, (REF B), A GERMAN FIRM OR INDIVIDUAL MUST RECEIVE A LICENSE FROM THE BUNDESBANK (WHICH IS RARELY GRANTED) FOR ANY CREDITS TAKEN UP OUTSIDE OF THE FRG WHICH ARE NOT EXEMPTED FROM THE BARDEPOT.

3. IN RECENT TALKS WITH BUNDESBANK AND FRG ECONOMICS MINISTRY OFFICIALS AND WITH THE BANKING AND BUSINESS COMMUNITY, IT IS BECOMING INCREASINGLY CLEAR THAT THE BUNDESBANK'S INTERPRETATION OF "COMMERCIALLY CUSTOMARY TERMS OF PAYMENT" MAY, IN SOME CASES, BE SO RESTRICTIVE AS TO PRECLUDE "NORMAL" EXIM OR OTHER TYPES OF FINANCING FOR US EXPORTS TO THE FRG.

4. THE TOP BUNDESBANK WORKING LEVEL OFFICIAL ON THE BARDEPOT TOLD US THAT THE BUNDESBANK INTERPRETS SECTION 69 B (1) 1 OF THE BARDEPOT ORDINANCE (REF D) TO REQUIRE THAT "COMMERCIALLY CUSTOMARY TERMS OF PAYMENT" BE CONSIDERED TO BE THE "NORMAL" TERMS OF PAYMENT WHICH THE SELLER OF GOODS AND SERVICES (IN OUR CASE, A US EXPORTER) HAS OFFERED IN THE PAST DIRECTLY TO THE GERMAN IMPORTER.

5. THUS, AS THE OFFICIAL POINTED OUT, THE "NORMAL" USE OF EXIM CREDITS OR OTHER BANKING CREDITS TO LIMITED OFFICIAL USE

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FINANCE GERMAN IMPORTS IS NOT REPEAT NOT CONSIDERED BY THE BUNDESBANK TO SATISFY THE "COMMERCIALLY CUSTOMARY TERMS OF PAYMENT" REQUIREMENT UNLESS THE FINANCING TERMS OFFERED BY EXIM OR PRIVATE BANKS CORRESPOND TO THE TERMS OFFERED DIRECTLY TO THE GERMAN IMPORTER BY THE US SELLER OF GOODS AND SERVICES. BY CORRESPONDING, THE BUNDESBANK MEANS THAT THE NON-SELLER CREDITS MUST NOT HAVE A LONGER

MATURITY NOR PROVIDE FOR A LOWER DOWNPAYMENT, ETC.,
THAN THE TERMS OFFERED DIRECTLY BY THE US SUPPLIER.
DIFFERENCES IN INTEREST RATES, HOWEVER, ARE ALLOWED.
THE BUNDESBANK OFFICIAL POINTED OUT THAT
A GERMAN IMPORTER MUST ALWAYS, IN THEORY, HAVE THE
CHOICE BETWEEN A DIRECT CREDIT FROM THE SUPPLIER
AND SOME OTHER METHOD OF IMPORT FINANCING.

6. THUS, THE APPARENT BUNDESBANK INTERPRETATION
WOULD SEEM TO BE ESPECIALLY RESTRICTIVE IN CERTAIN

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INFO OCT-01 EUR-25 ADP-00 AID-20 CIAE-00 COME-00 EB-11

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AMCONSUL FRANKFURT
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SECTORS OF INTERNATIONAL TRADE WHERE SUPPLIERS HAVE
CUSTOMARILY DEMANDED PAYMENT WITHIN A RELATIVELY

SHORT TIME FRAME, BUT WHERE ECONOMIC FACTORS HAVE JUSTIFIED THE USE OF LONGER MATURITY, EXPORT TIED FINANCIAL CREDITS FROM EXIM, PRIVATE BANKS, OR OTHER SOURCES.

7. IN CONTRAST TO THE SOUNDINGS RECEIVED FROM THE BUNDESBANK AND WORKING LEVEL FRG ECONOMICS MINISTRY OFFICIALS, ASSISTANT SECRETARY STEEG OF THE FRG ECONOMICS MINISTRY TOLD US THAT THE BARDEPOT ORDINANCE WAS NOT DESIGNED TO LIMIT 'COMMERCIAL CUSTOMARY TERMS OF PAYMENT' TO THOSE "NORMALLY" OFFERED BY THE SUPPLIER, BUT SHOULD ALLOW LIMITED OFFICIAL USE

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"COMMERCIAL CUSTOMARY" CREDITS FROM EXIM, BANKS, OR OTHER SOURCES WHICH ARE DIRECTLY TIED TO EXPORTS TO THE FRG. FRAU STEEG CHARACTERIZED THE UNCERTAINTY OVER PROPER "CUSTOMARY TERMS OF PAYMENT" AS BARDEPOT GROWTH PAINS (KINDERKRANKHEIT). SHE PROMISED TO REVIEW OUR CONCERNS WITH THE BUNDESBANK.

8. THE MOST FREQUENTLY ASKED QUESTION BY THE BUNDESBANK AND THE ECONOMICS MINISTRY IS WHETHER WE CAN PROVIDE SPECIFIC CASES WHERE A BARDEPOT INTERPRETATION IS RESTRICTIVE IN OUR VIEW. OUTSIDE OF NUCLEAR POWER PLANTS AND FUEL (REF A), WE ARE NOT AWARE OF ANY.

9. ACTION REQUESTED: IN ORDER TO ASSURE THAT THE BARDEPOT IS NOT BECOMING, IN FACT, A NON-TARIFF TRADE BARRIER, WE URGENTLY NEED SPECIFIC CASE EXAMPLES WHERE ALLEGED RESTRICTIVE BUNDESBANK INTERPRETATIONS OF "COMMERCIAL CUSTOMARY TERMS OF PAYMENT" MAY HINDER OUR EXPORT EFFORTS TO THE FRG.

10. WE HAVE ALSO RECEIVED ON A CONFIDENTIAL BASIS AN INTERNAL WORKING DOCUMENT OF THE DEUTSCHER INDUSTRIE UND HANDELSTAG (GERMAN CHAMBER OF COMMERCE) WHICH LISTS THE "COMMERCIAL CUSTOMARY TERMS OF PAYMENT" AS DETERMINED BY THE BUNDESBANK FOR A WIDE RANGE OF GERMAN IMPORTS.

11. THE LIST IS ACCOMPANIED BY THE FOLLOWING COVERING REMARKS:
BEGIN QUOTE THE BUNDESBANK HAS MADE AVAILABLE TO US THE CATALOGUE (STATUS AS OF APRIL 12, 1973) OF CURRENTLY VALID PERIODS OF PAYMENT WHICH ARE ACKNOWLEDGED BY THE BUNDESBANK AS BEING COMMERCIAL CUSTOMARY IN THE MEANING OF THE BARDEPOT REGULATIONS. REGARDING THE PERIODS OF PAYMENT AS INDICATED IN THE

ATTACHED TABLE, THE BUNDESBANK PRESUPPOSES THAT THE BEGINNING OF THE PERIODS OF PAYMENT, AS LISTED IN THE TABLE, NORMALLY COINCIDE WITH THE DAY OF DELIVERY (SHIPMENT).

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12. IN A SEPARATE LETTER, THE BUNDESBANK EMPHASIZES THAT AT ANY TIME, IT RESERVES THE RIGHT, TO SUBSEQUENTLY REVISE THE PERIODS OF PAYMENT ACKNOWLEDGED AS BEING COMMERCIALY CUSTOMARY, IF NEW AND MORE DETAILED DATA SHOULD NECESSITATE SUCH REVISION.

13. IN PARTICULAR, THE BANK STATES THAT THE USE OF THE EXEMPTIONS AS PROVIDED BY SECTION 69, PARAGRAPH 1, NOS. 1 AND 2 OF THE FOREIGN ECONOMY ORDINANCE REQUIRES THAT PERIODS OF PAYMENT AND/OR ADVANCE PAYMENTS FOR FOREIGN TRADE TRANSACTIONS ARE COMMERCIALY CUSTOMARY. COMMERCIALY CUSTOMARY TYPES OF CREDIT FINANCING OR OTHER PAYMENT PROCEDURES IN PRINCIPLE DO NOT MEET THIS REQUIREMENT; FOR EXAMPLE, IF FOREIGN EXPORTERS ACCEPT AN ACCEPTANCE BILL AT THE TIME PAYMENT FOR THE GOODS BECOMES DUE, AND IF THE DISCOUNT CHARGES FALL ON THE DOMESTIC IMPORTER THIS, AS A RULE, DOES NOT CORRESPOND TO THE PROVISION OF COMMERCIALY CUSTOMARY TERMS OF PAYMENTS BY THE EXPORTERS. THEY (THE EXPORTERS) WANT, AS THE DISCOUNTING OF THE BILL SHOWS, IMMEDIATE CASH PAYMENT. END QUOTE

14. THE FOLLOWING IS THE LIST OF GOODS OBTAINED FROM THE DEUTSCHER INDUSTRIE UND HANDELSSTAG FOR WHICH "COMMERCIALY CUSTOMARY PERIODS OF PAYMENT" AS DETERMINED BY THE BUNDESBANK (AS OF APRIL 12, 1973) ARE KNOWN. THE DATA ARE GIVEN IN THE FOLLOWING ORDER: (1) TYPE OF GOOD; (2) TERMS OF PAYMENT;

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TO SECSTATE WASHDC 6316

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(3) EXPORTING COUNTRY (IF SPECIFIED) AND (4) REMARKS
(IF ANY). FOR GOODS MARKED WITH AN (), PAYMENT
PERIODS HAD BEEN REVISED.

CAR TIRES, THREE MONTHS, SPAIN;

CONSTRUCTION MACHINERY (AMOUNTS OF UP TO DM L00,000()),
SIX MONTHS, SEMI-ANNUAL REPAYMENTS IN EQUAL AMOUNTS;
CONSTRUCTION MACHINERY (AMOUNTS BETWEEN DM L00,000
AND 500,000)(), L2 MONTHS, SEMI-ANNUAL REPAYMENTS
IN EQUAL AMOUNTS;

CONSTRUCTION MACHINERY (AMOUNTS OVER DM 500,000)(),
24 MONTHS, SEMI-ANNUAL REPAYMENTS IN EQUAL AMOUNTS;
LIGHT FIXTURES(), TWO MONTHS, WESTERN EUROPE;

GASOLINE, ONE MONTH;

INLAND VESSELS, CASH, THE NETHERLANDS;

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FLOORING, THREE MONTHS, WESTERN EUROPE

FUEL ELEMENTS FOR NUCLEAR POWER PLANTS, TWO YEARS,
USA;

CHEMICALS, ONE TO THREE MONTHS, INCLUDING SOME RAW
MATERIALS;

DIAMONDS (SYNTHETIC), FOUR MONTHS, USA;

ELECTRONIC DATA PROCESSING SYSTEMS, THREE MONTHS, USA,

HARD- AND SOFTWARE;
RAILROAD REFRIGERATOR CARS, FIVE YEARS: 80 PERCENT
IN TEN ANNUAL PAYMENTS, ITALY, FOR LARGER ORDERS;
ELECTROMOTORS(), THREE MONTHS, WESTERN EUROPE;
ELECTRO-TECHNICAL PRODUCTS(), TWO MONTHS, WESTERN
EUROPE;
ELECTRO-TECHNICAL PRODUCTS(), THREE MONTHS, OVERSEAS;
PEANUTS, CASH;
TELEVISION SETS(), TWO MONTHS, WESTERN EUROPE;
FITTINGS, ONE MONTH;
AIRCRAFT, SIX YEARS: 70 PERCENT IN L2 SEMI-ANNUAL
PAYMENTS (30 PERCENT DOWN-PAYMENT), JAPAN, USED
AIRCRAFT;
AIRCRAFT, SIX YEARS: 85 PERCENT IN SIX ANNUAL PAYMENTS
(15 PERCENT DOWN PAYMENT), SOVIET UNION, NEW
AIRCRAFT (YAK 40);
AIRCRAFT, TEN YEARS: 85 PERCENT (USA 90 PERCENT)
IN 20 SEMI-ANNUAL PAYMENTS (15 PERCENT DOWN PAY-
MENT; USA PROBABLY 10 PERCENT), NEW LARGE CAPACITY
AIRCRAFT ONLY;
FEEDS, CASH;
FORK LIFT, SIX MONTHS;
THREAD (YARN, ETC.), TWO MONTHS, WESTERN EUROPE;
DIESEL OIL, ONE MONTH;
FROZEN MEAT, CASH;
GENERATORS(), THREE MONTHS, WESTERN EUROPE;
GRAIN, CASH;
SEMICONDUCTORS(), THREE MONTHS;
MANUAL SPRAY GUNS, SIX MONTHS, USA;
HEATING FUEL, SEE DIESEL OIL;
COFFEE, CASH, RAW COFFEE;
WORSTED YARN, TWO MONTHS, WESTERN EUROPE;
NUCLEAR POWER PLANTS(), TEN YEARS: 90 PERCENT IN
20 SEMI-ANNUAL PAYMENTS (TEN PERCENT DOWNPAYMENT),
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USA, SAME CONDITIONS ACCEPTED ALSO FOR NUCLEAR
REACTORS ALONE;
COAST MOTOR BOATS, SEE SEA VESSELS;
SYNTHETIC PRODUCTS, THREE MONTHS;
COPPER, CASH;
COPPER SCRAP, ONE MONTH, WESTERN EUROPE;
LACQUER ASSEMBLY LINE SYSTEM (AUTOMOBILES), 12-14
MONTHS, USA;
VARNISH PRODUCTS, THREE MONTHS;
LICENSING CHARGES, THREE TO FOUR MONTHS, SETTLEMENT:
A) QUARTERLY; TRANSFER IN THE FOLLOWING MONTH;
B) MONTHLY: TRANSFER AFTER THREE MONTHS AT THE
LATEST;
COMBINE, THREE TO FOUR MONTHS, ENGLAND AND FRANCE;

MACHINE WORKS FOR THE FOOD, CHEMICAL AND
PHARMACEUTICAL INDUSTRIES, 12 MONTHS, SCANDINAVIA;
MACHINERY EQUIPMENT FOR LARGE PLANTS, FIVE YEARS:
80 PERCENT IN TEN SEMI-ANNUAL PAYMENTS (20 PERCENT
DOWN PAYMENT), VALUE OF DELIVERY AT LEAST DM 0.5
MILLION;
JUKE BOXES, THREE MONTHS, USA;
SEWING MACHINES, THREE MONTHS, JAPAN;
NON-FERROUS METALS (EXCEPT NCKEL AND MERCURY), CASH,
RAW METALS;
NICKEL, 45 DAYS;
PAPER, CARDBOARD AND SIMILAR PRODUCTS, ONE MONTH,
WESTERN EUROPE;
PAPER, CARDBOARD AND SIMILAR PRODUCTS, 45 DAYS,
NORTH AMERICA;

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PAPER PROCESSING MACHINES, THREE MONTHS, FRANCE;
FURS, CASH;
PASSENGER CARS, THREE MONTHS, WESTERN EUROPE;
PASSENGER CARS, FIVE MONTHS, JAPAN;
PHONOGRAPHIC EQUIPMENT, TWO MONTHS, WESTERN EUROPE;
PUMPS, THREE MONTHS, WESTERN EUROPE, ESPECIALLY OIL
BURNER AND HOT WATER CIRCULATING PUMPS;
RICE, CASH;
CRUDE OIL, THREE MONTHS, FRANCE, PLACE OF ORIGIN:
MEDITERRANEAN AREA;
CRUDE OIL, FIVE MONTHS, PLACE OF ORIGIN; MIDDLE EAST;
CRUDE OIL BY-PRODUCTS, TWO MONTHS, THE NETHERLANDS,
ENGLAND, USA, EXCEPT PROPELLANTS AND HEATING FUEL;
RADIOS(), TWO MONTHS, WESTERN EUROPE;
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RADIOS(), THREE MONTHS, JAPAN;
CHOCOLATE, TWO TO THREE MONTHS, ALSO CHOCOLATE PRODUCTS;
SEA VESSELS, EIGHT YEARS: 80 PERCENT IN 16 SEMI-
ANNUAL PAYMENTS (20 PERCENT DOWN PAYMENT), NEWLY
CONSTRUCTED;
TOYS, CASH, SOUTH-EAST ASIA;
LIQUORS, THREE MONTHS, FRANCE, GREAT BRITAIN;
SPORT ARTICLES, TEN DAYS, SWEDEN;
STEELWORKS PRODUCTS, ON THE 15TH OF THE MONTH FOLLOWING
DELIVERY OR 30 DAYS, SCANDINAVIA;
TOBACCO, CASH, RAW TOBACCO;
CARPETS, 45-90 DAYS, ANIMAL- AND SYNTHETIC-TYPE;
TEXTILES, THREE MONTHS, HONG KONG;
TEXTILES, TWO MONTHS, WESTERN EUROPE;
TAPE RECORDERS, TWO MONTHS, WESTERN EUROPE;
TRACTORS, THREE TO FOUR MONTHS, ENGLAND AND FRANCE;
WATCHES, 45 DAYS, EUROPE, JAPAN;
WRAPPING MATERIAL, SEE PAPER;
BALL BEARINGS, SIX MONTHS, JAPAN;
ROLLING MILL PRODUCTS(), SEE STEEL WORKS PRODUCTS;
WALL PANELLING, THREE MONTHS, FRANCE;
WINES, 45-90 DAYS DEPENDING ON DELIVERY VALUE, WESTERN
EUROPE;
WOOL, 168 DAYS, ANIMAL WOOL AND COTTON;
WOOLEN MATERIALS, TWO MONTHS, ITALY;
HILLENBRAND

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